

Proposed Implementation of High Frequency )  
Portion of Loop (HFPL)/Line Sharing Service. ) Docket No. 00-0393 (Rehearing)  
)

**JOINT CLECS' OPPOSITION TO AMERITECH MOTION TO FILE SURREPLY**

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## **JOINT CLECS' OPPOSITION TO SBC-AMERITECH MOTION TO FILE SURREPLY**

AT&T Communications of Illinois, Inc.; Covad Communications Company; Rhythms Links, Inc.; Sprint Communications Company L.P. d/b/a Sprint Communications L.P.; and WorldCom, Inc. (collectively, "Joint CLECs"), by their attorneys, oppose SBC-Ameritech's Motion to submit yet another brief in this docket. The "Surreply to Staff's Reply Brief on Exceptions" is not permitted by Commission Rules; is particularly unwarranted here given the number of briefs, rounds of testimony, witnesses and hearing dates in this docket; is unnecessary and duplicative because SBC-Ameritech already addressed the same issues in its Reply Brief on Exceptions; and is completely without merit. The Commission should reject SBC-Ameritech's Motion, sanction SBC-Ameritech for filing a frivolous motion, and issue a final Order.

### **I. The Commission's Rules Do Not Provide for a "Surreply to Exceptions."**

The Commission's Rules provide only for Exceptions and Replies to Exceptions, not Surreplies to Exceptions.<sup>1</sup> There is a good reason for this – the case must end some time and carriers must have certainty in order to do business. If the Commission does not put an end to SBC-Ameritech's litigation tactics, this case may be caught in an endless cycle of filings – SBC-Ameritech could file its Surreply to Staff's Reply Brief on Exceptions. Then Joint CLECs and Staff could file a response to the Surreply. Then SBC-Ameritech could file objections to the responses. Then we could have further evidentiary hearings. And so on and so on and so on. However, the Commission's Rules are designed to facilitate the resolution of cases, not prolong them *ad infinitum*.

Joint CLECs are quite certain that SBC-Ameritech disagrees with some portion of Staff's Reply Brief on Exceptions. But Joint CLECs also take issue with some portions of Staff's

RBOE. However, the existence of such disagreements is not a reason to allow this case to be derailed by endless rounds of repetitive briefing. In every Commission docket, parties will have disagreements before, during and after the Exceptions phase, yet that is no reason to file endless series of briefs.

In short, SBC-Ameritech's Surreply is impermissible under the Commission's Rules, and for good reason. Accordingly, the Commission should reject SBC-Ameritech's Motion in its entirety.

## **II. A Surreply Is Unwarranted, Given the Circumstances of this Docket.**

If there was ever a docket suffering from overkill, this is the docket. SBC-Ameritech requests to file yet another brief concerning issues that it has dragged out for over a year. It first litigated these issues in Docket Nos. 00-0312/0313. In this docket, SBC-Ameritech has had two evidentiary hearings. SBC-Ameritech's original case in this docket featured:

- ?? four rounds of testimony
- ?? five witnesses
- ?? a three-day evidentiary hearing
- ?? an Initial Brief
- ?? Reply Brief
- ?? Brief on Exceptions
- ?? Reply Brief on Exceptions.

SBC-Ameritech later filed an Application for Rehearing and then a Motion to Reopen the Record. SBC-Ameritech's rehearing case featured:

- ?? three rounds of testimony
- ?? 13 witnesses.
- ?? a seven-day evidentiary hearing
- ?? Initial Brief
- ?? Brief on Exceptions

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<sup>1</sup> Ill. Admin. Code § 200.830.

## ?? Reply Brief on Exceptions

And now this. What's next? SBC-Ameritech's "Surreply" provides a glimpse of what is next. It argues that "the appropriate course would be to require Ameritech Illinois to file a tariff that offers the Broadband Service as a UNE."<sup>2</sup> That would open an unfair and unreasonable opportunity for SBC-Ameritech to continue to further delay CLECs' legal right to obtain line sharing UNEs by filing a noncompliant tariff, which would likely force the Commission to expend further resources to open an investigation into that tariff. Such a process could create yet another year of delay. Meanwhile, SBC-Ameritech continues to add thousands of DSL customers while its competitors are forced out of business due lack of access to necessary UNEs.

SBC-Ameritech's tactics are precluded by the new Illinois telecom legislation. That law specifically authorizes the Commission to impose interim tariffs.<sup>3</sup> If SBC-Ameritech does not like the tariff, it is free to file a petition with the Commission. However, the interim tariff remains in effect, which means that competition cannot be ground to a halt while SBC-Ameritech endlessly litigates every detail.<sup>4</sup>

In light of the extensive record in this docket and the multiple opportunities SBC-Ameritech has had to address the issues, the Commission should reject SBC-Ameritech's Motion and Surreply, and adopt the tariff proposed by Staff and supported by Joint CLECs.

### **III. SBC-Ameritech Has Already Briefed the Issues in Its Surreply.**

SBC-Ameritech's Surreply is unnecessary and duplicative because it has already addressed the issues in the Surreply. As SBC-Ameritech states repeatedly in its Motion, the

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<sup>2</sup> SBC-Ameritech Surreply at 11.

<sup>3</sup> 220 ILCS 5/13-501(b).

<sup>4</sup> Of course, if SBC-Ameritech would simply comply with its unbundling obligations, none of this would be necessary.

tariff supported by Staff is a modified version of the tariff proposed by Joint CLECs in their Brief on Exceptions. SBC-Ameritech had the opportunity to address the tariff and did so in detail in its Reply Brief on Exceptions. Attachment A to this brief is the Table of Contents from SBC-Ameritech's RBOE. Just from looking at the Table of Contents, the Commission can readily see that SBC-Ameritech has already addressed the issues it now claims it has had no opportunity to address. This lack of opportunity claim is disingenuous and must be rejected. SBC-Ameritech simply seeks another bite at the apple and has articulated no good reason why it should be allowed to do so. All of the tariff terms that SBC-Ameritech argues should not be in the Staff tariff appeared in the Joint CLEC Proposed Tariff attached to the Joint CLEC Brief on Exceptions. Again, Joint CLECs disagree with every argument in SBC-Ameritech's RBOE, but under the Commission's Rules, Joint CLECs are not permitted to file a brief responsive to SBC-Ameritech's RBOE. The Commission should not suspend these rules for SBC-Ameritech.

Because SBC-Ameritech has already addressed the merits of Staff's proposed tariff in its Reply Brief on Exceptions, it should not be permitted to do so again.

### **III. The Surreply Is Without Merit.**

As discussed above, the Commission should reject SBC-Ameritech's Motion without reaching the merits because a Surreply is impermissible and unnecessary. However, even if the Commission considers the Surreply, it should reject it because it is completely meritless. Joint CLECs will not address every frivolous allegation but several particularly egregious mischaracterizations are worth addressing. SBC-Ameritech's principal allegation is that the proposed tariff violates the Proposed Order because it would allow CLECs to access the lit fiber subloop as an individual UNE.<sup>5</sup> This allegation is untrue. The proposed tariff does not permit

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<sup>5</sup> SBC-Ameritech Surreply, p.4.

access to individual Project Pronto components as UNEs under most circumstances. Instead, the proposed tariff permits access to a Project Pronto end-to-end UNE, which is in accordance with the Proposed Order.

Specifically, SBC-Ameritech alleges that Section 10 of Staff's proposed tariff would require SBC-Ameritech "to provide a lit fiber subloop UNE between the remote terminal and central office."<sup>6</sup> Section 10 of the proposed tariff does allow CLECs to access the lit fiber subloop *but only when CLECs collocate a DSLAM in a remote terminal*. The opening phrase of Section 10 of the Proposed Tariff is unambiguous and dispositive. It states, "Where CLEC collocates its DSLAM at a remote terminal at the fiber/copper interface ..."<sup>7</sup> Given the amount of effort that SBC-Ameritech poured into this case to force CLECs to collocate DSLAMs at RTs and access dark fiber to transport traffic to the central office to avoid having to provide Project Pronto on an unbundled basis, the mischaracterization of the requirements of the Proposed Tariff that SBC-Ameritech presents as part of its "Surreply" is staggering. Collocating DSLAMs in each of the thousands of remote terminals in Illinois would be prohibitively expensive. SBC-Ameritech therefore fought to force CLECs to collocate DSLAMs in remote terminals and Joint CLECs fought against that requirement. Joint CLECs prevailed and the Proposed Order does not require CLECs to collocate DSLAMs in remote terminals in order to serve customers that subtend Project Pronto NGDLCs. The Proposed Order instead lets CLECs obtain a broadband end-to-end UNE from the customer location to the OCD in the central office. In those rare instances where a CLEC chooses to collocate a DSLAM in a remote terminal – presumably because it has enough customers in that area to justify the expense – the proposed tariff allows access to the lit fiber subloop as a UNE. This is mandatory because if the CLEC has a DSLAM

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<sup>6</sup> SBC-Ameritech Surreply, p. 4.

collocated in a remote terminal, it must have access to the fiber subloop to get its data traffic from the remote terminal to the Central Office.

Again, the proposed tariff is quite clear that access to the lit fiber subloop is permitted *only* when a CLEC has collocated a DSLAM in the remote terminal. SBC-Ameritech's complete mischaracterization of this issue is illustrative of its mischaracterization of the proposed tariff in general.

SBC-Ameritech also patently mischaracterizes Sections 5.5.1 and 8.7 of the Proposed Tariff. There SBC-Ameritech complains that it is not required to provide transport to the CLEC collocation or the point of interconnection for various reasons including that it is not required to combine UNEs for CLECs.<sup>8</sup> Several responses to that are warranted. First, SBC-Ameritech's favored broadband service allows CLECs to pick up data packets from the OCD and transport them to their collocation cage. Dispute over these terms from the Proposed Tariff is disingenuous at best. Without a way to deliver the data packets to the CLEC network, the Proposed Order's requirements of an end-to-end HFPL loop are meaningless. CLECs need to obtain the traffic from Ameritech in order to route it on their networks. Sections 5.5.1 and 8.7 merely codify this requirement. Second, 220 ILCS 5/13-801(b)(1)(a)(b) and (c) require Ameritech to provide for the facilities and equipment for interconnection with a requesting carrier at any technically feasible point that is at least equal in quality and functionality to that provided by the incumbent to itself or its affiliates. The evidence is clear that Ameritech intends to transport the DSL data packets to its affiliate, AADS, in its collocation cage or other point of interconnection. Otherwise, Ameritech's much trumpeted DSL service would not allow its

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<sup>7</sup> Staff Proposed Tariff, page 16, Section 10.

<sup>8</sup> SBC-Ameritech Surreply, p. 9.

customers to access the Internet or perform any other function. Finally, 220 ILCS 5/13-801(d)(3) requires Ameritech to combine any sequence of network elements that it combines for itself. The Illinois law cannot be clearer. Moreover, Ameritech and AADS stipulated in a previous Commission docket that services provided to AADS by Ameritech would be provided to other carriers on the same terms and conditions.<sup>9</sup> AADS, if it still is viable given the *ASCENT* decision, must combine the end-to-end Broadband UNE with transport to its data network. Joint CLECs are asking for the same functionality.

Many of the other arguments in SBC-Ameritech's Surreply rely upon the notion that Staff's Proposed Tariff somehow departs from its earlier recommendations in the case.<sup>10</sup> Of course, Staff can respond to these allegations directly, but Joint CLECs merely observe the following. The end-to-end UNE adopted in the Proposed Order was not Staff's preferred alternative. (Staff Initial Brief on Rehearing, p. 17)<sup>11</sup> And if it is determined that Staff somehow did change its position during the exceptions phase of this docket, as a non-party, it is free to do so. Staff changed its position from the Original Order in this docket to even offer up the suggestion of an end-to-end NGDLC UNE-P. Joint CLECs have not asked the Commission for additional briefing rounds to address that. At bottom, Staff is free to advocate the Proposed Tariff to give the Commission the ability to quickly adopt a product that CLECs can immediately use. The current controversy over the section 801 tariff pending at the Commission is all the evidence the Commission needs to determine that Ameritech will not willingly adopt a tariff that fairly implements the terms of a Commission Order.

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<sup>9</sup> ICC Docket No. 94-0308 (Aug. 16, 1995) (AADS Certificate of Service docket)

<sup>10</sup> See SBC-Ameritech Surreply, p. 5 (regarding future features and functionalities); p. 6 (regarding CBR PVCs at greater than 96 kbps); p.7 (different QoS Classes), etc.

<sup>11</sup> The Staff Initial Brief on Rehearing stated on page 17, "Should the Commission determine that unbundling of Project Pronto, and specifically line card collocation is infeasible—which the Staff does not recommend—it is  
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Accordingly, the Commission should reject SBC-Ameritech's Surreply as unnecessary and duplicative, and adopt the proposed tariff.

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nonetheless possible to require Ameritech to offer Project Pronto in the form of an end-to-end unbundled product – a sort of ‘NGDLC UNE-P.’”

## **CONCLUSION**

The Commission should reject Ameritech's Motion outright and issue a final Order. Additionally, the Commission should sanction Ameritech because the Motion is frivolous.

Respectfully submitted,

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**Attachment A**  
**SBC-Ameritech Reply on Exceptions Table of Contents**

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